

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of:
Univision Partnership of New Jersey
v.
Comcast Cablevision of Danbury, Inc.
Request for Mandatory Carriage of
Television Station WFUT-TV,
Newark, New Jersey
CSR-5906-M

MEMORANDUM OPINION AND ORDER

Adopted: September 9, 2002

Released: September 12, 2002

By the Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. Univision Partnership of New Jersey ("UNJ"), licensee of television broadcast station WFUT-TV, Newark, New Jersey ("WFUT" or the "Station") filed the above-captioned must carry Complaint against Comcast Cablevision of Danbury, Inc. ("Comcast"), for failing to carry WFUT on its cable television systems serving Danbury, Bethel, Bridgeport, Ridgefield and Stamford, Connecticut (the "cable communities"). UNJ also asserts that it is entitled to be carried on channel 68 on Comcast's cable systems, which is the channel number that WFUT is broadcast on over the air. Comcast filed an Opposition to which UNJ replied. For the reasons discussed and to the extent indicated below, we grant the complaint for must carry status in three of the cable communities, but decline to mandate that WFUT be carried on channel 68 of the cable systems.

II. BACKGROUND

2. Under Section 614 of the Communications Act of 1934, as amended, and implementing rules adopted by the Federal Communications Commission ("Commission") in Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues ("Must Carry Order"), commercial television broadcast stations such as WFUT are entitled to assert mandatory carriage rights on cable systems located within the station's market.1 A station's market for this purpose is its "designated market area," or DMA, as defined by Nielsen Media Research.2 The term DMA is a geographic market designation that defines each television market exclusive of others, based on measured viewing patterns.

1 8 FCC Rcd 2965, 2976-2977 (1993).

2 Section 614(h)(1)(C) of the Communications Act, as amended by the Telecommunications Act of 1996, provides that a station's market shall be determined by the Commission by regulation or order using, where (continued...)

3. Section 614 of the Communications Act and the Commission's rules also provide that a commercial television station asserting must carry rights is required to deliver a good quality signal to the principal headend of a cable system. Because the cable operator is in the best position to know whether a given station is providing a good quality signal to the system's principal headend, the initial burden of demonstrating the lack of a good quality signal appropriately falls on the cable operator. For UHF commercial television stations, the standard used to determine what constitutes a good quality signal at a cable system's headend is -45dBm.³

4. With regard to channel positioning rights, Section 614(b)(6) of the Act and Section 76.57 of the Commission's rules provide commercial television stations electing must carry status with three channel positioning options. A station may elect to be carried on: (1) the channel number on which the station is broadcast over the air; (2) the channel number on which the station was carried on July 19, 1985; or (3) the channel number on which the station was carried on January 1, 1992. The Act and the rules also provide that a broadcast station may be carried on any other channel number mutually agreed upon by the station and the cable operator.⁴

III. DISCUSSION

5. In support of its Complaint, UNJ states that its television station, WFUT, is licensed to Newark, New Jersey, which is in the New York DMA. It further states that Comcast operates cable television systems serving Danbury, Bethel, Bridgeport, Ridgefield and Stamford, Connecticut, which are also in the New York DMA. UNJ contends that because WFUT is located within the same DMA as these cable systems, WFUT is entitled to mandatory carriage on the cable systems. UNJ explains that it acquired WFUT in late 2001, and in December 2001, conducted a signal strength test at Comcast's cable system in Danbury that established WFUT's signal level exceeded the -45dBm signal strength mandated by the Commission. UNJ asserts that in February 2002, it formally requested that Comcast commence carriage of WFUT's signal on its cable systems in the cable communities, and that Comcast denied this request.⁵ In its Opposition, Comcast claims that it does not operate cable television systems in Bridgeport and Stamford, Connecticut.⁶ In its Reply, UNJ states that Comcast has not contested its factual and legal arguments.⁷

6. We find that WFUT is entitled to must carry status on Comcast's cable television systems serving three of the five communities listed in UNJ's Complaint: Danbury, Bethel and Ridgefield, Connecticut. The Commission's computer data base (the COALS system) of cable systems registered at the Commission does not indicate that Comcast has cable systems in Bridgeport and Stamford, the two other communities cited in UNJ's Complaint.

(...continued from previous page)

available, commercial publications which delineate television markets based on viewing patterns. *See* 47 U.S.C. § 534(h)(1)(C). Section 76.55(e) of the Commission's rules, 47 C.F.R. § 76.55(e), requires that a commercial broadcast television station's market be defined by Nielsen Media Research's DMAs.

³ 47 U.S.C. § 534(h)(1)(B)(iii), 47 C.F.R. § 76.55(c)(3).

⁴ 47 U.S.C. § 534(b)(6); 47 C.F.R. § 76.57.

⁵ Complaint at 1-4.

⁶ Opposition at 1.

⁷ Reply at 1.

7. The Commission's rules require television stations to elect either must carry or retransmission consent status at three year intervals. The last election had to be made by October 1, 1999, and the next election by October 1, 2002, which will become effective January 1, 2003. If a television station failed to make an election, it is considered to have elected must carry status.⁸ Neither party in this proceeding indicates that the station made an election in 1999, and UNJ implies that no election was made. For example, UNJ states in its Complaint that a station's lack of historical carriage by a cable system is not relevant to its complaint, and that prior to UNJ's acquisition of WFUT in late 2001, "the station was operated as a Home Shopping Network station which duplicated the Home Shopping Network programming that is currently carried on Channel 99 of the [cable] System. Given these circumstances, it is not surprising that Comcast has not historically carried WFUT or that the prior licensee did not press the matter."⁹ Because it appears that the television station did not formally elect must carry or retransmission consent status in 1999, the station, based on the Commission's rules, has must carry rights by default on the Comcast cable systems serving Danbury, Bethel and Ridgefield. Further, although the ownership of the station changed after 1999, the new owner of the station assumes the must carry/retransmission consent rights of the station as determined by the prior owners.¹⁰

8. A television station asserting must carry rights is also required to deliver a good quality signal to the cable system's principal headend,¹¹ and UNJ submitted a signal strength test in support of its Complaint indicating that it has complied with this requirement.¹² Because the cable operator is in the best position to determine whether a television station is providing a good quality signal to the system's headend, the initial burden of raising this issue and demonstrating the lack of a good quality signal rests with the cable operator. Comcast, in its Opposition, did not address this issue, and, therefore, we assume that WFUT delivers a good quality signal.

9. In its Complaint, UNJ further requests that Comcast carry WFUT on channel 68, which corresponds to its over-the-air channel.¹³ Television stations, at the time they elect must carry, may also assert certain channel positioning rights, including the possibility of being carried by a cable system on a channel number that is the same used by the station for its over-the-air broadcast.¹⁴ Because it appears that the station did not elect must carry or retransmission consent status in 1999, it did not assert channel positioning rights. Thus, WFUT has no legal right to claim channel 68 on the cable system at this time. WFOT may, however, formally assert must carry, including channel positioning rights, or retransmission consent status during the current election period which ends October 1, 2002.¹⁵

⁸ 47 C.F.R. § 76.64(f).

⁹ Complaint at 4-5.

¹⁰ *Complaint of San Jose Licensee, Inc. v. Viacom Cable*, 11 FCC Rcd 2954, 2955 (1996).

¹¹ *See supra* note 3.

¹² Complaint, Exhibit C.

¹³ Complaint at 1-2.

¹⁴ *See supra* note 4.

¹⁵ *See supra* notes 4 and 8.

10. Finally, Comcast requests in its Opposition that the Commission defer consideration of UNJ's Complaint until the Commission answers its Petition for Special Relief, which Comcast filed on August 15, 2002, to exclude Danbury from the New York DMA.¹⁶ UNJ argues in its Reply that the Commission should not delay action on its Complaint until it acts on this Petition because the Commission is required by law to resolve its Complaint within 120 days of filing. UNJ also argued that the Commission should deny Comcast's Petition.¹⁷ As indicated by UNJ, the Commission has a statutory deadline to reply to Complaints within 120 days after filing.¹⁸ In order to meet this deadline, we deny Comcast's request to hold this proceeding in abeyance.

IV. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED**, pursuant to Section 614 of the Communications Act of 1934, as amended (47 U.S.C. § 534), that the must carry complaint filed by Univision Partnership of New Jersey, licensee of television broadcast station WFUT, Newark, New Jersey against Comcast Cablevision of Danbury, Inc. **IS GRANTED** to the extent indicated above.

12. **IT IS FURTHER ORDERED** that WFUT's request to be carried on its over-the-air channel on the cable systems, and Comcast's request for a delay in this proceeding **ARE DENIED**.

13. **IT IS FURTHER ORDERED** that Comcast **SHALL COMMENCE CARRIAGE** of the WFUT signal in its Danbury, Bethel and Ridgefield, Connecticut cable television systems within sixty (60) days from the date of the release of this *Order*.

14. This action is taken under authority delegated by Section 0.283 (47 C.F.R. § 0.283) of the Commission's rules.

FEDERAL COMMUNICATIONS COMMISSION

Mary Beth Murphy
Chief, Policy Division
Media Bureau

¹⁶ Opposition at 1-2.

¹⁷ Reply at 2-4.

¹⁸ 47 U.S.C. § 534(d)(3).